IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1462 OF 2006

SUGANLAL MULCHAND SETHI .. PETITIONER

Vs.

2. THE STATE OF MAHARASHTRA .. RESPONDENTS

Mr. Prashant Patil i/b J. Shekhar & Co. for petitioner

Mr. F. R. Shaikh, Addl.PP

CORAM:-SMT. RANJANA DESAI, J.

DATED:- 11/12/2006

P.C.

. In this writ petition the petitioner has prayed that the F.I.R. in C. R. No. 55/2005 registered at Tasgaon Police Station for the offence punishable under Section 3 & 7 of the Essential Commodities Act, 1955 and Petroleum Act, 1966 and the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution & Prevention of Malpractices) Order, 1998, be quashed.

2. I have heard the learned counsel for the petitioner at great length. He has taken me

through the complaint. From the complaint it appears that Tahsildar of Palus gave a surprise visit to the petitioner's petrol pump on 19/4/06 at 5-30 p.m. He collected petrol in one bottle and diesel in another bottle. The bottles were sent for test and the report of the laboratory was that the sample is adulterated. On the basis of this, the aforesaid F.I.R. was lodged.

3. The learned counsel contended that in the complaint there is a reference to Sections 3 and 7 of the Essential Commodities Act, 1955. He submitted that there is no indication as to which order issued by the Government under the provisions of Section 3 has been breached by the petitioner. He submitted that on this ground the F.I.R. needs to be quashed.

4. The learned counsel then submitted that while seizing the sample proper procedure is not followed. He submitted that only one bottle of diesel and one bottle of petrol were seized. As per the requirement six bottles of each of the commodities have to be seized. He further submitted that the petrol or diesel had to be seized in aluminium containers which was not done.

The learned counsel contended that panchnama also was not done. He submitted that breach of this procedure is fatal to the case and on that ground the complaint deserves to be quashed.

5. I am not impressed by this submission. Whether proper panchnama was done or not, whether there is any breach of procedure, if there is a breach of procedure what is the extent thereof and what is its effect on the prosecution, if there is any breach, is it fatal to the prosecution can only be decided after the evidence is adduced. Similarly effect of non mentioning of a particular order in the complaint will also be evident after the nature of the offence comes to light after evidence is adduced. On these grounds complaint cannot be quashed. This is not a case where the complaint prima facie does not disclose any offence. Besides chargesheet is already filed. Offence alleged is serious.

6. In the circumstances, the petition cannot be entertained. It is rejected.

7. I make it clear that all observations made by me are prima facie observations and the trial court

seized of the matter will deal with the case independently uninfluenced by these observations. JUDGE.